IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1043 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABULAL CHUNILAL THAKKAR

Versus

KHODABHAI DAHYABHAI

Appearance:

1. Civil Revision Application No. 1043 of 2000

MR SURESH M SHAH for Petitioner No. 1

MR MEHUL S SHAH for Petitioner No. 1

NOTICE SERVED for Respondent No. 1,3

NOTICE UNSERVED for Respondent No. 2,4

MR DC DAVE for Respondent No. 5

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/12/2002

ORAL JUDGEMENT

#. Mr.Shah, learned advocate, for the petitioner, seeks permission to delete respondent nos.1 to 4 so far as it relates to the present revision application. Permission is granted. Respondent nos. 1 to 4 are permitted to be deleted from this revision application.

#. Rule. Mr.Dave waives service of rule for respondent No.5. With the consent of the parties, the matter is taken for final hearing today.

#. The petitioner is the original plaintiff of Special Civil Suit No.149 of 1996, which is pending in the court of the learned Civil Judge (Senior Division), Nadiad. The said suit has been filed for getting decree for specific performance. During pendency of the said suit, the petitioner - original plaintiff gave the application under Order 6, Rule 17 of the Civil Procedure Code for amendment of the plaint. In the said suit, the plaintiff has already claimed alternative relief for damages against defendant nos. 1 to 4, but such prayer is not made against defendant No.5, who is respondent No.5 herein on whose behalf Mr.Dave is appearing. By the amendment, the plaintiff wanted to claim damages against defendant No.5 also and for that purpose, amendment application was preferred. Ultimately, the learned trial Judge has rejected the said application Exh.132 on the ground that such prayer against the defendant No.5 is time barred. The said order is impugned in this revision application.

#. At the time of hearing of this revision application, Mr.Dave, learned advocate, for respondent No.5 - original defendant No.5 states that, he has no objection if the said amendment is granted subject to limitation. In view of the said consensus, the order passed by the trial Court is set aside. The amendment sought for by the original plaintiff is accordingly granted by allowing the application Exh.132. It is, however, clarified that the said amendment is granted subject to the question of limitation, which is required to be decided in the suit by the trial Court. It is needless to say that, at the time of deciding the suit, the trial Court will have to consider, whether relief claimed against defendant No.5 is time barred or not. Accordingly, this revision application is allowed with the consent of the parties. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)
(pathan)